

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

3 CLIFF THOMAS, ) Case 1:16-cv-01581  
4 )  
Plaintiff, )  
5 )  
v. ) Alexandria, Virginia  
6 ) July 14, 2017  
RAYMOND ROBERTS, *et al.*, ) 10:56 a.m.  
7 )  
Defendants. )  
8 ) Pages 1 - 22

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9 TRANSCRIPT OF MOTIONS FOR AWARD OF ATTORNEYS' FEES  
10 BEFORE THE HONORABLE ANTHONY J. TRENGA  
11 UNITED STATES DISTRICT COURT JUDGE  
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25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 THE CLERK: Civil Action 1:16-cv-1581, *Cliff*  
2 *Thomas v. Raymond Roberts, et al.*

3 Will counsel please identify themselves for  
4 the record.

5 MS. WATSON: Good morning, Your Honor.  
6 Cathryne Watson for the plaintiff, Cliff Thomas.

7 THE COURT: Good morning.

8 MR. VIETH: Good morning, Your Honor. Robert  
9 Vieth of Hirschler Fleischer for the Curtis defendants,  
10 and with me is my colleague, Mr. Alex Boyd, of our  
11 office.

12 THE COURT: Welcome.

13 MR. OSTER: Good morning, Your Honor. Steven  
14 Oster for Donald and Kimberly Berlin, defendants.  
15 Thank you, Your Honor, for the privilege of appearing  
16 in your court this morning.

17 MR. GUTKOWSKI: Good morning, Your Honor.  
18 David Gutkowski of Odin, Feldman & Pittleman on behalf  
19 of Zachary and Gena Casagrande.

20 MR. WAYNE: Good morning, Your Honor.  
21 Charles Wayne on behalf of the Roberts defendants.

22 THE COURT: Good morning, Mr. Wayne.

23 We're here on a motion for attorneys' fees in  
24 connection with the dismissed claims against the  
25 dismissed defendants. I've reviewed the filings. I'd

1 be pleased to hear from counsel as far as what they  
2 don't think they've already adequately explained to the  
3 Court.

4 MR. VIETH: Thank you, Your Honor. Again,  
5 Robert Vieth for the Curtis defendants, Your Honor.

6 We do recognize the standard in this case is  
7 a high one. It's really whether the complaint was  
8 frivolous or groundless. For that reason, these  
9 motions are somewhat unusual or perhaps extraordinary.  
10 I don't believe I've ever filed one, but this is a case  
11 where we think attorneys' fees are warranted.

12 There is really no basis for the claims that  
13 were filed against Mr. and Mrs. Curtis and especially,  
14 as we've said in our papers, Mrs. Curtis.

15 THE COURT: Based on what you and the other  
16 counsel have provided, is there any way the Court can  
17 assess what the incremental cost was of representing  
18 the wives as opposed to the husbands?

19 MR. VIETH: I think that would be difficult,  
20 Your Honor, because we did represent both. The claims  
21 were identical as against both. The factual  
22 circumstances were somewhat different. But candidly,  
23 when we were working on the case, we did not separate  
24 out -- we were raising the same arguments by and large  
25 on behalf of each of those defendants.

1           I actually would submit to Your Honor that  
2 even as against Mr. Curtis, this case was groundless  
3 and frivolous. The actions in the complaint were thin  
4 to say the least. I would suggest to the Court that  
5 there are at least a couple of circumstances applicable  
6 here that don't appear in every dismissed case brought  
7 under the civil rights acts that certainly suggest that  
8 in Your Honor's discretion -- this is a discretionary  
9 call on Your Honor's part of course. But it suggest  
10 that Your Honor should exercise your discretion to at  
11 least award some fees here.

12           This is not just a stand-alone lawsuit  
13 really. It was an outgrowth of proceedings that  
14 continue to be litigated in Loudon County Circuit  
15 Court. It was really multiplication of legal  
16 proceedings that, in this case, was, I think,  
17 unwarranted. These claims or similar claims could have  
18 been raised in Loudoun County. By the way, that case  
19 was referred to in the complaint, and the complaint  
20 even acknowledged the defendants here, the defendants'  
21 success in that case there.

22           THE COURT: What do you say to the notion  
23 which I see not explicitly stated, pretty much infused  
24 into the plaintiff's position that this case really  
25 should be considered within the context of the notion

1 that based on all the facts and circumstances, this was  
2 a good faith effort to expand the law based on -- to  
3 extend to a claim that a racially motivated lawsuit,  
4 albeit one that proved successful at least up to this  
5 point, is actionable under 1981 if not some of these  
6 other claims?

7 MR. VIETH: I didn't quite understand the  
8 plaintiff to be making the argument quite the way Your  
9 Honor framed it, but I think that argument at the end  
10 is not sufficient to overcome the claim for attorneys'  
11 fees here.

12 The Third Circuit spoke to, I think, this  
13 very issue in the *Barnes Foundation* case that we've  
14 cited in the papers where the court in 2001 essentially  
15 issued a warning to plaintiffs who were filing lawsuits  
16 like this against defendants for the defendants  
17 exercising their First Amendment rights by filing a  
18 lawsuit or by petitioning government officials. The  
19 Third Circuit made it clear that while the law up to  
20 that point may have been somewhat mucky, from this  
21 point on, every plaintiff like this is on notice that  
22 they're doing this at their peril, in the words of the  
23 court, because it is clear that this is an attempt to  
24 chill the First Amendment rights of the defendants.  
25 That is the second circumstance that I think really

1 makes this case one that is appropriate for some sort  
2 of deterrent.

3           This type of case is -- well, the claims in  
4 this case, Your Honor, are serious ones. No person  
5 likes to be accused of engaging in racial animosity or  
6 racially motivated conduct. That's the allegation that  
7 was made in this case, and there was simply no basis  
8 for it.

9           When it is, in fact, an effort to chill or  
10 would have the effect of chilling First Amendment  
11 rights that the defendants had, it is all the more  
12 egregious, Your Honor. Frankly, it tends to trivialize  
13 what can sometimes be in some cases, not this one, but  
14 in other cases serious racially motivated conduct.  
15 There was just zero evidence of that here. Even the  
16 allegations on the face of the complaint were  
17 insufficient to move forward.

18           I'm sure Your Honor takes no pleasure in  
19 going through legal bills and the like. The good news  
20 here is there seems to be no challenge as to rates.  
21 There seems to be only the most casual challenges to  
22 some of the time entries. We'd be happy to address  
23 that if you'd like.

24           I think unless the Court has any questions, I  
25 would be happy to rest on that and on our papers.

1 THE COURT: All right. Thank you.

2 MR. VIETH: Thank you.

3 THE COURT: Counsel.

4 MR. GUTKOWSKI: Yes, Your Honor. I have very  
5 little to add, frankly.

6 THE COURT: You're appearing on behalf of?

7 MR. GUTKOWSKI: The Casagrandes, Your Honor.

8 THE COURT: The Casagrandes.

9 MR. GUTKOWSKI: Dr. Casagrande and  
10 Mrs. Casagrande.

11 We would adopt the arguments made by  
12 Mr. Vieth, and we don't need to belabor the point.

13 If you have any questions about our papers,  
14 I'd be happy to answer them.

15 There are two things that I would like to add  
16 to Mr. Vieth's argument. One is not only do we have  
17 the face of the complaint, which is thread bare of  
18 anything other than conclusory statements related to  
19 any sort of discriminatory intent or any actions taken  
20 by any of these codefendants, we also now have the  
21 benefit of discovery closing. In the opposition to the  
22 instant motions, it was devoid of any evidence  
23 supporting any factual allegations made in the  
24 complaint.

25 As to Mr. Casagrande or Dr. Casagrande, I



1 should say, as we point out in our papers, there's a  
2 very, frankly, reckless allegation made in the  
3 complaint that's echoed within the first amended  
4 complaint where Dr. Casagrande approached an arborist  
5 working on the plaintiff's yard and asked him why he  
6 was working for a quote, unquote, black man. That's in  
7 paragraph 20 of the first amended complaint.

8           As Your Honor, I'm sure, read in our  
9 submissions, Mr. Thomas was under oath at the Loudon  
10 County Court and plainly stated that he has no clue  
11 whether or not Dr. Casagrande was that person or if  
12 Dr. Casagrande was even there. He objected to the  
13 question on the grounds of hearsay. I don't mean to  
14 make light of it, Your Honor, but it's a fairly  
15 remarkable passage that I'm sure Your Honor has  
16 reviewed.

17           So even as to the one factual allegation in  
18 the complaint that could somehow be tied to some sort  
19 of racial animus as to Dr. Casagrande, he's already  
20 recanted that. He's already stated under oath he has  
21 no clue whether or not that's true. Yet, here it is in  
22 his complaint as has been echoed in his first amended  
23 complaint, Your Honor.

24           Again, regarding our fees, if you have any  
25 questions about our fees, I'm happy to answer them or

1 any of our other submissions. Otherwise, Your Honor,  
2 I'll also rest on that.

3 THE COURT: All right. Thank you.

4 MR. GUTKOWSKI: Thank you very much, Your  
5 Honor.

6 MR. OSTER: Good morning. Steven Oster on  
7 behalf of Donald and Kimberly Berlin. Unless Your  
8 Honor has some specific questions regarding the  
9 Berlins' submission, I'll adopt the arguments of  
10 cocounsel and not take up any more of Your Honor's  
11 time.

12 THE COURT: All right. Thank you.

13 MR. OSTER: Thank you, Judge.

14 THE COURT: Anyone else?

15 (No response.)

16 THE COURT: All right. Counsel.

17 MS. WATSON: Yes. Thank you, Your Honor.

18 As Your Honor knows, attorneys' fees against  
19 a federal civil rights plaintiff is an extreme  
20 sanction, and it's a chilling sanction. It's an  
21 extraordinary one, and it's not appropriate in this  
22 case.

23 As we try to describe in our papers, the  
24 state law in litigation is not meant to be repealed.  
25 It's not meant to be appealed or relitigated by these

1 federal civil rights claims, but they are necessarily  
2 relevant facts to the plaintiff's claims.

3           So what he knew when he filed this complaint  
4 and made these claims was that the defendant's husband  
5 had approached him and his wife, the plaintiff and his  
6 wife, and told him that he wasn't going to be able to  
7 use his property how he wanted.

8           THE COURT: This is at the Panera meeting,  
9 correct?

10           MS. WATSON: That's right, Your Honor.

11           THE COURT: There are no allegations that  
12 there were any racial slurs or statements in the  
13 context of that particular meeting; was there?

14           MS. WATSON: That's correct, Your Honor.

15           The Supreme Court has said that racial  
16 discrimination is usually not explicit. It's usually  
17 shown by circumstantial evidence.

18           The plaintiff's white predecessor on the  
19 property had pursued commercial ventures, such as -- I  
20 believe he talked about a soccer field and a golf  
21 facility. He had implemented an equestrian venture  
22 there. But according to his testimony, he got along  
23 just fine with all the neighbors. But when the black  
24 family moves in, they don't get along fine with him.

25           THE COURT: I guess they thought he was going

1 to use the property as a vineyard. Is that right?

2 MS. WATSON: That seems to be the heart of  
3 the defendant's position as far as what the true  
4 motivation is. I will say on, I believe, January 2 the  
5 plaintiff sent an e-mail to his neighbors saying that  
6 planting grapes was a personal hobby and interest and  
7 so not a serious commercial venture plan. So from the  
8 plaintiff's point of view, that doesn't seem to really  
9 hold water. That seems pretextual as far as a reason  
10 to go after him so aggressively.

11 If I may, I'd like to draw the Court's  
12 attention to the Plaintiff's Exhibit 22 to our  
13 opposition to summary judgment filed by Defendant  
14 Mr. Roberts. That's a declaration by Mr. Thomas of an  
15 event that happened recently on June 24.

16 The plaintiff held a private gathering, a  
17 party, and all of his guests were black. He observed  
18 Mr. Casagrande stopping his guests as they were trying  
19 to find his property and later in the evening was  
20 advised that the sheriff's office was inundated with  
21 complaints of noise and marijuana smoke coming from the  
22 plaintiff's property, which was -- there wasn't even  
23 alcohol served at this party. No one even smoked a  
24 cigarette. There certainly wasn't any marijuana  
25 smoking, and the deputies advised that there wasn't a

1 noise issue.

2           So I would put forth to you that false  
3 complaints of marijuana smoke and unruly behavior from  
4 the only black family on the block who has their black  
5 guests over is a racially-charged event.

6           THE COURT: Why would the Court consider that  
7 in evaluating whether at the time he filed the lawsuit  
8 he had an adequate factual basis?

9           MS. WATSON: What our position is is that  
10 Mr. Thomas was under attack and feeling like he was  
11 being run out of his neighborhood.

12           THE COURT: I understand his feelings about  
13 that. Tell me: Other than the Panera meeting as to  
14 each of these three defendants, what is it that was  
15 alleged in -- what was the factual basis for it? Begin  
16 with Casagrande. I understand that the one allegation  
17 that was made against him -- and that is that he said  
18 to one of the workmen, Why are you working for a black  
19 man -- what was the factual basis for that?

20           MS. WATSON: Mr. Thomas explained in his  
21 deposition testimony that his business partner had  
22 relayed to him that the arborist had told her that  
23 someone who works under the arborist had relayed to him  
24 that Mr. Casagrande had said that, had said, Why are  
25 you working for a black man?

1           Mr. Thomas also testified that those  
2 contractors who had worked for him had told him that  
3 Mr. Roberts, the remaining defendant, was --

4           THE COURT: Just stick with Casagrande.  
5 Other than that statement in the Panera meeting, what  
6 was the basis for the claim other than the filing of  
7 the lawsuit?

8           MS. WATSON: Well, his participation in the  
9 lawsuit, and plaintiff was advised by developer Jim  
10 Brown that Mr. Roberts was the ringleader of the whole  
11 neighborhood. I mean, these neighbors presented as a  
12 united front. They talked about, We are not going to  
13 let this happen.

14           They are a united front. Their version is  
15 they're a united front against the winery. But from  
16 the plaintiff's point of view, they're a united front  
17 against -- they weren't a united front against  
18 Mr. Pomata, the white predecessor, but they are against  
19 the plaintiff.

20           THE COURT: I understand that position. Just  
21 so I'm clear, other than that, anything else on  
22 Casagrande?

23           MS. WATSON: I believe that pretty much sums  
24 it up.

25           THE COURT: What about Berlin?

1 MS. WATSON: It's similar to what I've just  
2 explained about Mr. Casagrande.

3 THE COURT: All right. And Curtis, separate  
4 from the Panera meeting and the filing of the lawsuit,  
5 what was the basis for bringing the claim against him?

6 MS. WATSON: I believe it is the same as I've  
7 described.

8 THE COURT: All right.

9 MS. WATSON: Our point is we understand that  
10 these defendants have been dismissed on a 12(b)(6)  
11 motion, but from what the plaintiff knew when he filed  
12 the lawsuit --

13 And I would say also from some of what's been  
14 learned in discovery as far as -- you know, the  
15 Thomases were completely intimidated and scared by that  
16 meeting at Panera. They felt ambushed and got a clear  
17 message that these households were not going to put up  
18 with what they wanted to do with their property.

19 And so my point is we understand these were  
20 dismissed, but under these circumstances, the severe  
21 and chilling sanction of punishing the plaintiff with  
22 attorneys' fees is not warranted.

23 As Your Honor knows, the attorneys' fees  
24 award provision of these civil rights statutes is  
25 intended to allow private citizens to be private,

1 Attorneys General to maintain the robustness of these  
2 civil rights laws, not to punish them when they get  
3 their claims dismissed on 12(b)(6).

4 So thank you.

5 THE COURT: All right. Any other defendants  
6 want to respond?

7 MR. VIETH: I have nothing further, Your  
8 Honor.

9 THE COURT: All right. Anyone else?

10 MR. GUTKOWSKI: No, Your Honor. We would --  
11 I'm sorry.

12 THE COURT: Come to the podium, please.

13 MR. GUTKOWSKI: To the extent that Your  
14 Honor -- and based upon your comments, I don't believe  
15 you do. But to the extent Your Honor lends any  
16 credence to the declaration or the notion as to what  
17 recently occurred on the property, there are several  
18 photographs that I reviewed yesterday that show that  
19 the declaration submitted by Mr. Thomas doesn't carry  
20 any water in that respect, that this was a large  
21 function. There was drinking. There was smoking,  
22 etc., etc., etc. So to the extent that Your Honor in  
23 any way is moved by that argument, I'm happy to submit  
24 those things. Otherwise, I have nothing further, Your  
25 Honor.



1 THE COURT: All right. Counsel, do you have  
2 anything further?

3 MR. OSTER: Your Honor, I only have one brief  
4 point with respect to the Berlins, and I think it also  
5 applies to the Curtises and the Casagrandes. There was  
6 not a shred of evidence, not any evidence that  
7 Mr. Berlin or his wife -- clearly his wife -- had ever  
8 done, said, or participated in anything of a racial  
9 nature.

10 The Panera meeting is noteworthy not for what  
11 the people disagree about, but it's noteworthy for what  
12 Mr. Thomas, his wife, and the defendants all agree.  
13 They were concerned that there not be commercial  
14 activity on the property.

15 Now, it's true that Mr. Pomata, the former  
16 owner, did have his son's wedding there. But to try to  
17 compare that to --

18 THE COURT: Well, the allegation was, as I  
19 recall, using it for other commercial purposes.

20 MR. OSTER: There was an allegation that he  
21 had considered using it for other commercial purposes  
22 but not that he had.

23 THE COURT: I see.

24 MR. OSTER: At the end of the day, the  
25 parties agree that what was discussed at the meeting

1 was a desire not to have commercial activity on the  
2 property, which is perfectly reasonable. Whether it's  
3 right or wrong is irrelevant, but it's perfectly  
4 reasonable.

5           The entire defense, as I understand, to  
6 attorneys' fees is, Well, we really thought -- we  
7 thought that we were being treated differently because  
8 of our race. I think the Fourth Circuit's decision in  
9 *Lotz* makes clear that that's insufficient.

10           THE COURT: All right.

11           MR. OSTER: Thank you, Judge.

12           THE COURT: Plaintiff's counsel, let me ask  
13 you a question about this. What is the evidence and  
14 the allegations as far as the previous owner's actual  
15 commercial use of the property?

16           MS. WATSON: I believe it's -- well, as far  
17 as the complaint, we did take a deposition of  
18 Mr. Pomata, and he testified to having considered  
19 commercial ventures.

20           THE COURT: I understand. Was it ever  
21 actually used for commercial pursuits?

22           MS. WATSON: I believe he used it for an  
23 equestrian commercial venture on part of the property.  
24 I believe he used it for equestrian purposes. The  
25 remaining defendant has testified he didn't have as

1 much of a problem with that pursuit versus a vineyard.

2           If I may, I would just like to reiterate not  
3 wanting a vineyard next door is arguably a legitimate  
4 reason. But the plaintiffs had tried to ease his  
5 neighbor's fears about some big commercial vineyard via  
6 e-mail by saying that was a hobby and he didn't have a  
7 particular -- he didn't have a specific plan for that.

8           You know, this is -- that is a dispute.  
9 There are two perspectives on that. I don't think that  
10 that makes -- I don't think that that justifies calling  
11 his claims groundless or baseless or warranting a  
12 sanction.

13           THE COURT: I'll go back and read the  
14 complaint, but I thought there was an actual allegation  
15 that the previous owner had, in fact, used it for  
16 commercial properties, which is what caused the  
17 plaintiff to think that he was being treated  
18 differently than the previous owner.

19           MS. WATSON: I think you're right, Your  
20 Honor. I think he used it for an equestrian commercial  
21 venture.

22           THE COURT: What was the basis for that  
23 belief? Was that, in fact, borne out by discovery?

24           MS. WATSON: No. I believe the plaintiff was  
25 advised that by another witness, but I apologize. I

1 don't know exactly who.

2 THE COURT: All right.

3 MR. WAYNE: Your Honor, it is not my motion,  
4 but may I be heard?

5 THE COURT: Yes, Mr. Wayne.

6 MR. WAYNE: So, Your Honor, with regard to  
7 the prior commercial use -- so there are 12 lots.  
8 Everybody who bought a lot was told that there was a  
9 prior existing use on Lot 3 which was the equestrian  
10 center.

11 THE COURT: That's the plaintiff's current  
12 property?

13 MR. WAYNE: No, it is not.

14 Anyway, the equestrian center was primarily  
15 on Lot 3. The horses were allowed to run onto Lot 4A.  
16 That was a prior existing commercial use that when all  
17 the defendants -- when they all bought it, when  
18 everybody bought, it was said, This is part of the  
19 deal. There was no issue about whether there was an  
20 existing homeowners association with covenants, but  
21 that was part of the deal. The equestrian center was  
22 there and was grandfathered in.

23 After my client bought his property and  
24 Mr. Pomata was marketing his property -- that's the  
25 property Mr. Thomas eventually bought.

1 THE COURT: What lot number is that?

2 MR. WAYNE: That would be 4A.

3 THE COURT: Lot 4A.

4 MR. WAYNE: So Lot 4A when it was being  
5 marketed --

6 THE COURT: The plaintiff's property?

7 MR. WAYNE: Correct.

8 -- by Mr. Pomata, he was entertaining offers  
9 from individuals who wanted to build a soccer training  
10 facility and wanted to build a golf academy. This is  
11 in the spring of 2015. So those proposed sales were  
12 met with strong resistance by my client and the other  
13 defendants.

14 They were urging Mr. Pomata, A, not to do  
15 that, to sell to commercial use, number one; number  
16 two, petitioning the Loudoun County Board of  
17 Supervisors and the zoning people that the property  
18 should not be -- they were against the use of Lot 4A as  
19 a soccer academy or a golf academy. So this all  
20 happened long before Mr. Thomas bought Lot 4A.

21 THE COURT: All right.

22 MR. WAYNE: We're talking about disparate  
23 treatment here. The notion that Mr. Pomata was treated  
24 differently by the defendants than Mr. Thomas simply is  
25 not true. They were against commercial use of Lot 4A

1 when Mr. Pomata was seeking to sell it to commercial  
2 buyers.

3 THE COURT: All right. Thank you.

4 All right. I'm going to look at the record  
5 in a little more detail and take it under advisement.  
6 I'll get you a decision just as soon as I can.

7 All right. Thank you.

8 MS. WATSON: Thank you, Your Honor.

9 MR. VIETH: Thank you, Your Honor.

10 MR. WAYNE: Thank you, Your Honor.

11 THE COURT: The Court will stand in recess.

12 -----  
13 Time: 11:20 a.m.

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I certify that the foregoing is a true and  
accurate transcription of my stenographic notes.

/s/  
Rhonda F. Montgomery, CCR, RPR